

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA     )  
  )  
  )     No. 08 CR 6  
  )  
  )     Judge Wayne R. Andersen  
  )  
GERARDO RODRIGUEZ            )

**NOTICE OF FILING**

To: Christopher K. Veatch  
Assistant United States Attorney  
219 S. Dearborn St., 5<sup>th</sup> Floor  
Chicago, Illinois 60604

Please take notice that on this 28<sup>th</sup> day of March, 2008, the undersigned filed the following document(s) in the above captioned cause, a copy of which is attached hereto:

–     **DEFENDANT RODRIGUEZ’ RESPONSE TO THE GOVERNMENT’S  
MOTION IN LIMINE TO ADMIT PRIOR CRIMINAL CONVICTIONS**

Respectfully submitted,

FEDERAL DEFENDER PROGRAM  
Terence F. MacCarthy  
Executive Director

By: s/Daniel J. Hesler

Daniel J. Hesler

DANIEL J. HESLER  
FEDERAL DEFENDER PROGRAM  
55 E. Monroe, Suite 2800  
Chicago, IL 60603  
(312) 621-8347

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**DEFENDANT RODRIGUEZ’ RESPONSE TO THE GOVERNMENT’S  
MOTION IN LIMINE TO ADMIT PRIOR CRIMINAL CONVICTIONS**

Defendant GERARDO RODRIGUEZ, by the Federal Defender Program and its attorney, DANIEL HESLER, hereby responds to the government’s motion in limine to admit evidence of prior criminal convictions if the defendant testifies at trial. In general, defendant’s response is that, in this particular case, the decision as to whether to allow the government to impeach Mr. Rodriguez with his prior convictions should be delayed until after Mr. Rodriguez has testified on direct examination, if Mr. Rodriguez chooses to take the stand. Defendant further states as follows:

This is an illegal reentry trial. The government’s burden is to prove that Mr. Rodriguez is a non-citizen, that he has been previously removed from the United States, that he re-entered and/or was found here, and that he had not received permission from the Department of Homeland Security to do so. Three

of the four elements are heavily dependent on the introduction of records. The question of whether the defendant is, in fact, “here,” is the only element that is in any way a function of traditional eyewitness testimony.

A defendant in an illegal reentry trial has the right to testify like any other accused. However, as a practical matter this right is much more limited than it is in other types of cases. A defendant might claim not to be the person who was previously deported, but that would be a strange defense. A defendant might claim not to be here. That would be even stranger. In short, if the government has in fact identified an illegal reentrant, the most likely testimony of a defendant would consist primarily of admissions. If a person is here, they are here.<sup>1</sup>

Given the unusual nature of a §1326 prosecution, the mere fact that a defendant might testify does not necessarily put their credibility into issue. That question can only be answered after the testimony is heard. If Mr. Rodriguez testifies, and if he does not deny that he is here and that he has been previously deported, then his credibility is not in issue, and the government should not be allowed to gratuitously impeach him.

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<sup>1</sup>Obviously, if these are the options, one might wonder why a defendant would go to trial, much less testify, but each of these is the absolute right of a defendant.

Respectfully submitted,  
FEDERAL DEFENDER PROGRAM  
Terence F. MacCarthy  
Executive Director

By: s/Daniel J. Hesler  
Daniel J. Hesler

Daniel J. Hesler  
Federal Defender Program  
55 East Monroe, Suite 2800  
Chicago, IL 60603  
(312) 621-8347

**CERTIFICATE OF SERVICE**

The undersigned, Daniel J. Hesler , an attorney with the Federal Defender Program hereby certifies that in accordance with FED.R.CRIM. P. 49, FED. R. CIV. P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

**DEFENDANT RODRIGUEZ' RESPONSE TO THE GOVERNMENT'S  
MOTION IN LIMINE TO ADMIT PRIOR CRIMINAL CONVICTIONS**

was served pursuant to the district court's ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on March 28, 2008, to counsel/parties that are non-ECF filers:

By: s/Daniel J. Hesler  
DANIEL J. HESLER  
FEDERAL DEFENDER PROGRAM  
55 E. Monroe St., Suite 2800  
Chicago, Illinois 60603  
(312) 621-8347